

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON COLEMAN and JESSICA CASEY,
on behalf of the RVNB Holdings, Inc.
Employee Stock Ownership Plan, and on
behalf of a class of all other persons similarly
situated,

Plaintiffs,

v.

NEIL M. BROZEN, ROBERT PETERSON,
JR., VASILIA PETERSON, MIKE PAXTON,
NICK BOURAS, STERLING INVESTMENT
PARTNERS III, L.P., NICOLE PETERSON
2012 IRREVOCABLE TRUST, and BROOKE
PETERSON 2012 IRREVOCABLE TRUST,

Defendants.

Case No. 3:20-cv-01358-E

**MOTION FOR LEAVE TO FILE
PLAINTIFFS' NINTH NOTICE OF SUPPLEMENTAL AUTHORITY
IN FURTHER SUPPORT OF THEIR OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL INDIVIDUAL ARBITRATION**

Plaintiffs Jason Coleman and Jessica Casey ("Plaintiffs"), on behalf of the RVNB Holdings, Inc. Employee Stock Ownership Plan, move for leave to file the attached *Plaintiffs' Ninth Notice of Supplemental Authority in Further Support of Their Opposition to Defendants' Motion to Compel Individual Arbitration*. See Exhibit A. Defendants do not oppose this motion.

Defendants moved to compel arbitration on June 22, 2020. (ECF No. 66). Plaintiffs responded on July 13, 2020. (ECF No. 70). Defendants replied on July 27, 2020. (ECF No. 71).

Plaintiffs previously filed eight motions for leave to file notices of supplemental authority related to Defendants' motion to compel individual arbitration (ECF No. 72, 76, 81, 87, 91, 95, 108, 120). The Court granted the first seven of these motions (ECF Nos. 73, 77, 82, 88, 92, 96, 110), which were entered on the docket (ECF No. 74, 78, 83, 89, 93, 97, 112), and Defendants

responded to them (ECF No. 75, 79, 86, 90, 94, 98, 113). Plaintiffs' eighth motion for leave to file notice of supplemental authority (ECF No. 120) was filed on February 13, 2023, and is pending.

On January 25, 2023, the federal magistrate judge issued a report and recommendation in *Burnett v. Prudent Fiduciary Services LLC*, No. 22-270-RGA, 2023 U.S. Dist. LEXIS 13151, 2023 WL 387586 (D. Del. Jan. 25, 2023). *See* Exhibit 1 to *Plaintiffs' Ninth Notice of Supplemental Authority in Further Support of Their Opposition to Defendants' Motion to Compel Individual Arbitration*. On March 8, 2023, the district judge in *Burnett* adopted the report and recommendation. *Burnett v. Prudent Fiduciary Servs. LLC*, No. 22-270-RGA, 2023 WL 2401707 (D. Del. March 8, 2023). *See* Exhibit 2 to *Plaintiffs' Ninth Notice of Supplemental Authority in Further Support of Their Opposition to Defendants' Motion to Compel Individual Arbitration*. These two opinions in *Burnett* involve issues raised by Defendants' motion to compel arbitration in this case, including whether ERISA §§ 409(a) and 502(a)(2) authorize plan-wide relief, or instead, as Defendants incorrectly argue, they may be read to authorize a remedy limited to losses to a single participant's defined contribution plan account even where a breach of ERISA caused greater losses to the plan and to other participants' plan accounts. 29 U.S.C. §§ 1109(a), 1132(a)(2).

Because Plaintiffs believe the opinions in *Burnett* will assist the Court in ruling on *Defendants' Motion to Compel Individual Arbitration*, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file *Plaintiffs' Ninth Notice of Supplemental Authority in Further Support of Their Opposition to Defendants' Motion to Compel Individual Arbitration*.

Dated: March 31, 2023

Respectfully submitted,

By: /s/ Thomas R. Ajamie

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*Attorneys for Plaintiffs Jason Coleman &
Jessica Casey*

CERTIFICATE OF CONFERENCE

On March 30, 2023, I personally discussed by email the relief requested in Plaintiffs' motion to for leave to file Plaintiffs' ninth notice of supplemental authority with (1) Lindsay Camp, counsel for Defendants Robert Peterson, Jr., Vasilia Peterson, Mike Paxton, Nick Bouras, Sterling Investment Partners III, L.P., Nicole Petersen 2012 Irrevocable Trust, and Brooke Peterson 2012 Irrevocable Trust; and (2) Peter Allport, counsel for Defendant Neil Brozen. Both stated that the defendants in this case are not opposed to the relief sought in this motion as long as they can respond to the notice of supplemental authority.

/s/ John S. "Jack" Edwards, Jr.
John S. "Jack" Edwards, Jr.

CERTIFICATE OF SERVICE

I certify that on March 31, 2023, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Thomas R. Ajamie
Thomas R. Ajamie